No. 80-251

SEP 80

MICHAEL RODAK, J

IN THE

Supreme Court of the United States

October Term, 1980

BERNARD ROSTKER, Director of Selective Service,
Appellant,

v.

ROBERT L. GOLDBERG, et al.,
Appellees.

On Appeal From the United States District Court for the Eastern District of Pennsylvania

BRIEF OF APPELLEES IN OPPOSITION TO MOTION TO INTERVENE OF STACEY ACKER, ET AL.

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BRIEF OF APPELLEES IN OPPOSITION TO MOTION TO INTERVENE OF STACEY ACKER, ET AL.

INTRODUCTION

Appellees herein oppose intervention by Stacey Acker, et al.[1] This is not one of the rare instances in which those who have sat as observers in the lower courts should be permitted to appear in the Supreme Court of the United States "with the full dignity and right of a party." (Motion to Intervene, 15).

The proposed belated intervention would bring no new judicially cognizable interest or position before the Court. No choate interest of Proposed Intervenors is at stake in the judgment at bar, and no such interest will be sacrificed whatever its outcome. They would instead argue for the primary of expediency and popularity over the principle of equal justice. That argument would be made from factual contentions outside of the record, and as to which there has been neither investigation nor discovery. Intervention should be denied because the delay in seeking it is inexcusable and prejudicial to Appellees, and because to permit the intervention would be to transform the proceedings in this Court into a trial of nebulous issues of socio-psychology.

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1. The sixteen movants are referred to jointly hereinafter as "Proposed Intervenors." They are women, ages 18 through 26, who seek to intervene for the first time in this Court. They would present their "sociological, psychological and religious" views in opposition to the registration of women for possible conscription. They contend that the purported unpopularity of a gender-neutral registration should be heard in this Court as constitutional justification for the present statutory discrimination which the court below held to violate the Due Process and Equal Protection guarantees of the Fifth Amendment. (Motion to Intervene, 10-11, 15-18)

COUNTERSTATEMENT OF THE CASE AND PROCEDURAL HISTORY

This case presents the question of the constitutionality of legislation which discriminates on the basis of gender in the registration of persons for possible compulsory military service. In its Memorandum Opinion of July 18, 1980, the District Court held that:

> "the complete exclusion of women from the pool of registrants does not serve 'important governmental objectives' and is not 'substantially related' . . .to any alleged governmental interest. Thus, the MSSA[2] unconstitutionally discriminates between males and females." (Jurisdictional Statement, 43a).

That opinion followed the trial of a case which was filed in 1971 and which was publicized by three (3) reported decisions,[3] numerous news articles[4] and Congressional hearings. The decision itself reflects a careful and critical analysis of a record of more than two thousand (2,000) pages, treating all of the factual issues framed by the parties prior to trial. Defendants' alleged justifications for male-only registration, the contentions towards which virtually all of plaintiffs' discovery and trial evidence were directed, were provided in response to interrogatories requesting a statement of the alleged justifications, governmental interests, and the relationship of sex-discrimination to the MSSA: "The Selective Services Act reflects the manpower requirements of the military services by pro-

2. Military Selective Service Act, 50 U. S. C. App. §§ 451, et seq.

3. 480 F. 2d 545 (3d Cir. 1973); 378 F. Supp. 766 (E. D. Pa. 1974); 342 F. Supp. 339 (E. D. Pa. 1972).

4. See: *e.g.*, Appendix "A"; Revised Joint Documentary and Stipulated Record, 963, 1040-1045 (R. 963, 1040-1045).

viding for a system of conscription which makes males available for military assignment to combat and combat support activities in times of national emergency and armed hostilities abroad." (Defendants' Supplemental Answers and Objections to Plaintiffs' Interrogatories to Defendants (Set No. 1—Supplementary) (Responses 1 through 3))

The trial court permitted intervention by additional plaintiffs even after the case was set for trial (Jurisdictional Statement, 2a), and considered additional interventions as late as July 1, 1980, the actual day of trial. Even at that late date, intervention or joinder by additional plaintiffs was denied only after the Court granted the class action motion, so that the interests and factual situations of all proposed intervenors were before the Court. (Jurisdictional Statement, 2a-3a).

The Order of July 18 was appealed from on the same day it was entered. On September 16, 1980 the Proposed Intervenors filed their instant Motion to Intervene.

REASONS FOR THE DENIAL OF INTERVENTION

I. Proposed Intervenors Have Made No Showing of Exceptional Circumstances Which Would Justify Intervention in This Court.

Where intervention in this Court is at issue it is long settled law that:

> "[N]o one but an appellant . . . can be heard for the reversal of a decision in the subordinate court." *The Wm. Bagley v. United States,* 72 U. S. 583, 591 (1867).

The same general rule applies today:

> "intervention at the Supreme Court level is a remedy seldom invoked and rarely granted. In most situations, one must have intervened below, or at least sought to intervene below, in order to have any kind of standing to petition for certiorari."

Stern and Gressman, *Supreme Court Practice,* § 6.17 at 436 436 (5th ed. 1978). Indeed, Proposed Intervenors have cited no case which presents a situation even remotely analogous to the case at bar. In *Eastern-Central Motor Carriers Ass'n v. United States,* 321 U. S. 194 (1944), intervenors in the Supreme Court had appeared before the Interstate Commerce Commission where the factual record was made.[5] The other cases cited by Proposed Intervenors as examples of intervention in the Supreme Court, *Hunter v. Ohio ex rel. Miller,* 396 U. S. 879 (1979); *Banks v. Chicago Grain Trimmers Ass'n., Inc.,* 389 U. S. 813 (1967); *NLRB v. Acme Industrial Co.,* 384 U. S. 925 (1966),

5. 321 U. S., at 198-99.

offer no support for intervention in this case. For example, in *Banks,* suit was brought in the district court by a deceased man's employer, seeking to set aside an order of the Department of Labor ("DOL") granting compensation death benefits to the widow and children. 369 F. 2d 344, 346-47 (7th Cir. 1966). The widow, who had filed the original claim for benefits with the DOL, was not a party to the district or appellate court proceedings (DOL was supporting her position), but was allowed to intervene at the Supreme Court level *for the purpose of filing a Petition for Certiorari,* in order to protect her award *where none of the other parties sought review. Certiorari* was granted and she, not DOL, was the party. See 12 *Moore's Federal Practice* ¶ 434.01 (1980).

In *Hunter,* a judicial candidate whose name had been stricken from the ballot in an original action in the Ohio Supreme Court brought against the county board of elections *and in which he was denied intervention* was permitted to intervene and petition for *certiorari* in the Supreme Court when the board, which had represented his interest below, did not seek review. Reply Brief of Respondent Stark County Board of Elections, 3-9, *reprinted* in Stern and Gressman, at 1056-61. *NLRB v. Acme Industrial Co.* permitted a labor union to intervene in this Court's on the heels of *International Union UAW, Local 238 v. Scofield,* 382 U. S. 205 (1965), overturning prior law in the Seventh Circuit which had barred participation by unions in NLRB enforcement actions where the union had prevailed before the agency. Intervention in this Court has been limited to persons who participated or *could* not participate below.

II. There Are Substantial Reasons for Denial of Intervention Here.

A. The Proposed Intervention Is Inexcusably Late.

Proposed Intervenors would excuse their delay in seeking to participate in this case prior to September 16, 1980 by claiming ignorance of the case until after June 26, 1980 (Motion to Intervene, 11). Such ignorance was the result of the studied inattention of Proposed Intervenors. In addition to the prior reported decisions noted at footnote 3, in its Order of October 24, 1975 denying defendants' motion for summary judgment the district court's instructions to the parties were to "proceed with discovery in this matter so that a full record can be presented to the court before a final decision is made on the merits of this case." The docket sheet since 1975 reflects the ongoing discovery and motion practice in the case. Whenever Proposed Intervenors awoke to their interest in the issue of male-only registration for conscription, ascertaining the status of this case, which was quite active according to the reported opinions, would have required no more than a telephone call to the Clerk of the District Court or to counsel. Indeed, pretrial hearings on defendants' final motion for judgment in the case continued as late as December, 1979, with an opinion on February 19, 1980 denying the motion and setting the case for trial. Discovery actually continued until the very eve of trial. Quite contrary to the misdescription of the proceedings at Motion to Intervene, 11, trial briefs and post-trial submissions were accepted at all times prior to the Order of July 18, 1980.

Nor is Proposed Intervenors' claim that this case was dormant tenable according to the very public Congressional Hearings relied upon by both Appellant and Proposed Intervenors in the search for a justification for

male-only registration. When Deputy Assistant Attorney General Lawrence Sims appeared twice in open hearing before Congress in March, 1980, he took the opportunity to ask that Congress provide new, *post hoc* statutory history with which to defend the MSSA at *the trial of this case*: [6]

> "Mr. Simms (sic): . . . Before doing so, I would like to note that that is a matter that is currently in litigation before a three judge Federal Court in Philadeldelphia, the specific issue of the constitutionality of an all male draft. (R1042)
>
> * * *
>
> "The issue is now back before Congress, and *speaking solely for the Department of Justice as litigator, it should be fairly obvious to this committee that the defensibility of the all male draft is something which Congress perhaps should speak out clearly and formulate the kind of record if, indeed, it chooses to reject the Administration's proposal, which will be helpful rather than hurtful in the litigation.*" (R1045) (emphasis supplied).

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6. The responses of legislators sympathetic to this plea form the crux of the "case" presented by both Appellant and the Proposed Intervenors. E.g., Jurisdictional Statement, 13-15; Motion to Intervene, 15-18.

> "First, in that litigation it is before a three-judge court. The Court of Appeals for the Third Circuit several years ago determined that this issue presented a substantial constitutional question. It was necessary in order to give the three-judge court its statutory jurisdiction that that determination be made. The issue had never been decided by the Supreme Court of the United States on the merits, so we are in an area where we have to raise it solely by analogy to recent and prior somewhat older Supreme Court cases in this area as well as a fair amount of law made in lower federal courts." (R1042-1043)

"Senator Nunn. Just a couple of other questions and then a brief observation.

"Mr. Sims, we are going to have a legal hearing on this where you are going to testify, and we can get into this later at that time. But the challenge to excluding women could conceivably come from a male who has felt that his odds of registration went up if women were excluded. Is that correct?

"Mr. Sims. Yes, sir. In fact that is the nature of the present challenge we are dealing with before a three-judge court up in Philadelphia." (R963)

Finally, when the case of *Barnett v. Rostker*, No. 80-1578 in the District Court for the District of Columbia, was filed, plaintiffs therein noted and the press duly reported throughout the nation that the instant action was about to come to trial in Philadelphia. (Appendix "A") Yet, Proposed Intervenors did nothing in this case until Sept. 16, and even waited until July 15 to seek to intervene in *Barnett*.

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6. (Cont'd.)

"In our analysis you will note that in support of the constitutionality of the all male draft we do not call on in any way the legislative history or reasoning of the Congress which in 1949 adopted the law which the Administration is presently urging be changed. The reason for that is very simple. In virtually all of the lower court cases which have reached a judgment on this issue, the legislative history of the 1949 Act has been totally unhelpful to government in defending its constitutionality.

"The reason for that is, to summarize that legislative history, it is replete with—and unfortunately replete—only with the kind of sexual stereotypes and that kind of thinking that the Court has subsequently held will not support the constitutionality of a legislative act of Congress or of the state legislature." (R1044-1045)

The Proposed Intervenors delayed, first by inadvertence and then by design, until discovery closed, the record closed, trial was held, judgment entered and the case was pending in the Supreme Court before seeking any participation of any kind in the case. There is no excuse for such tardiness.

B. Intervention Would Be Disruptive and Unfair to Appellees and to the Court.

Proposed Intervenors concluded that, and they did not seek to intervene below before trial because, "meaningful intervention" was "impossible" (Motion to Intervene, 11). At this even later stage, intervention would be even less meaningful, and would be prejudicial to Appellees and disruptive to the appellate process.

To the extent that Proposed Intervenors wish to argue for a less rigorous standard by which to judge male-only registration or that there are considerations of military policy and management which necessitate the total exclusion of all women from the pool of persons upon whom the nation *could* call in a crisis, those arguments have been made and are being made in this litigation by Appellant, represented by the Department of Justice and the Solicitor General. It is the United States, by the Department of Justice, to which Congress and the courts have assigned the task of defending the constitutionality of Congressional statutes. 28 U. S. C. § 2403(a); Rule 28.4(b), Rules of the Supreme Court. The defense of policies embodied in statutes is the particular concern of the Government. Intervention by private parties where the Government is actively defending a statute or policy is expressly disfavored. *Commonwealth of Pa. v. Rizzo*, 530 F. 2d 501, 505 (3rd Cir.), *cert. denied* 426 U. S. 921 (1976); 7A *Wright & Miller*, Federal Practice and Procedure § 1909; at 528, 532.

Moreover, it is towards those issues that the record at trial was made, and it is the trial record which is considered on appeal. *Richardson v. Blanton,* 597 F. 2d 1078, 1079 (6th Cir. 1979); *Hill v. Trustees of Indiana University,* 537 F. 2d 248, 251, n. 2 (7th Cir. 1976); *Stearns v. Hertz Corp.,* 326 F. 2d 405, 408 (8th Cir.), *cert. denied,* 3774 U. S. 934 (1964). Thus, to the extent that Proposed Intervenors wish to argue anything truly different from Appellant,[7] the tardiness of the intervention would force consideration of new issues on a record made without those issues in mind, or transform this Court into a trial court on appeal.

C. The Arguments of the Individual Proposed Intervenors Are Not Material to This Case.

The Motion to Intervene itemizes the factual and philosophical reasons why each of the Proposed Intervenors wishes to remain exempt from registration for possible conscription (Motion to Intervene, n. 3). Most of the reasons given by the individual Proposed Intervenors are just that, individual reasons why this or that female might want herself exempted.[8] Those reasons accurately reflect the personal feelings and beliefs of millions of young *males* who also wish that they did not have to register. However, individual situations and beliefs would be best accounted for by a rational system of nondiscriminatory deferments or exemptions from induction or from military or combat service. Excluding all women from service because some women would find Army life offensive makes no more sense than excluding all males for the same reason.

7. And differences over tactics are no basis for intervention. 7A Wright & Miller, § 1909, at 531.

8. *E.g.*, the planning of families, fear of combat, religious scruples, modesty and privacy.

Individual considerations are simply irrelevant to the subject matter of this case, which is the constitutionality of a statute which excludes all women from possible compulsory military service while including all civilian male citizens. As the district court correctly noted, undetermined and unanticipated questions of ultimate utilization of personnel resources cannot justify failing to consider *all* significant resources which can be made available for future contingencies:

> "The die is already cast for substantial female involvement in the military. Furthermore, the military does not lose flexibility if women are registered because induction calls for females can be made according to military needs as they accrue in the future. Though military flexibility might call for less utilization of female inductees in a given crisis situation, it is the antithesis of 'flexibility' to exclude women from the pool of registrants that could be called upon in a time of national need." (Jurisdictional Statement, 41a-43a)

As Secretary of the Army Clifford Alexander put it:

> "No matter what you decide if there is a draft later, if you have women to register you know where they are. You have identified their names, addresses and can locate them quickly." Associated Press, July 19, 1980.

Finally, the bland assertions of the Proposed Intervenors that Congress had their particular situations and beliefs in mind when it enacted male-only registration and conscription (Motion to Intervene, n. 3) are entirely without support in the record. Indeed, the record refutes that contention and precludes consideration of the argument on appeal. (R60-61, 1712-1714) The record conclusively shows, as the Government admitted at trial, that no rea-

soned consideration has been given by Congress to the male-only aspect of conscription since prior to the reinstitution of peacetime registration in 1948. (R1044-1045, 1712-1714)

D. Proposed Intervenors' Ultimate Argument Is Not Cognizable in a Court of Law.

The Proposed Intervenors do articulate explicitly one argument which the Government makes only inferentially (Jurisdictional Statement, 3, 7). Proposed Intervenors fault the Appellant for not pressing upon this Court the chimera that registering women for the draft would have an "overwhelming and unacceptable impact on this country's women" and that "a gender-neutral draft would have [undesirable effects] on our national resolve." (Motion to Intervene, 15). Proposed Intervenors candidly adopt and urge the argument that female registration would imperil popular support for registering men. (*Id.*, at 16-18)

The argument that non-discriminatory treatment of men and women would be politically unpalatable, the new point which the Proposed Intervenors would add to the proceedings, cannot be countenanced in this Court. One of the most important purposes of the Constitution's equal-protection guarantee is to deprive legislators of the option of "pick[ing] and choos[ing] . . . [those] to whom they will apply legislation so as to escape the political retribution that might [result] if larger numbers were affected," *Railway Express Agency, Inc. v. New York,* 336 U. S. 106, 112-13 (1949) (Jackson, J., concurring). The Government "may not employ an invidious discrimination to sustain the political viability of its programs." *Memorial Hospital v. Maricopa County,* 415 U. S. 250, 266 (1974): *accord, Baldwin v. Montana Fish & Game Commission,* 436 U. S. 371, 391 n. 23 (1978).

E. Proposed Intervenors Present No Justiciable Claim or Defense.

Beyond the impropriety of their argument for presentation to any court by any person, it is clear that Proposed Intervenors present no litigable interest in the issue of military preparedness or the registration of *men*. If Congress chooses to forego until more exigent times authorizing the registration of anyone for the draft rather than register men and women, such is the prerogative of Congress in the raising of armies under Article I, § 8 of the Constitution. Ms. Acker, et al. present no interest in that decision other than is present in every citizen's interest in national defense policies. *Schlesinger v. Reservists to Stop the War,* 418 U. S. 208 (1974). Clearly the proper remedy for Proposed Intervenors' political problem lies in the political arena. If their true concern is the need for registration, let them urge Congress to provide for a constitutional system of registration and conscription.

If, on the other hand, their primary concern is that women not be registered, they present no issue ripe for adjudication in this case. Before they could be registered, an Act of Congress and its implementation by the President would be required. Even then, Proposed Intervenors concede that their concern is with as yet hypothetical "detrimental effects on [women which conscription] *might* have". (Motion to Intervene, 13) (emphasis supplied)

Their claims certainly fail to present a ripe "case or controversy" as required by Article III of the Constitution, because they rely on "a state of facts that has not yet appeared . . . and may never appear," *Webster v. Mesa,* 521 F. 2d 442, 444 (9th Cir. 1975), to avoid "a bare possibility of some injury in the future." *Gange Lumber Co. v. Rowley,* 326 U. S. 295, 305 (1945). *Accord, Int'l Longshoremen's & Warehousemen's Union, Local 37 v. Boyd,* 347 U. S. 222, 224 (1954).

F. The Factual Assumption of Proposed Intervenors' Argument Is Facially Invalid.

Underlying the argument of Proposed Intervenors is the assumption that their sociological, psychological and religious beliefs dominate American opinion. They do not. Certainly there is nothing in the record from which such an assumption could be supported. This Court cannot accept the rhetoric of litigants or politicians in lieu of reliable statistical and sociological evidence, scrutinized at trial. In fact, the assumption of national outrage at the thought of registering women is contradicted by the information at hand.

For example, the New York Times-CBS poll released February 20, 1980 asked directly whether the respondent favored registration of men and women, men only, or no registration. Of the general population, 51% favored unisex registration, 31% favored registration of men only, and 18% either opposed registration or had no opinion. Quite similarly, the March 2 and July 20, 1980 Gallup polls, also of the general population, showed 56% and 51%, respectively, favoring registration of women at this time.

Disaffection with the means by which an army is conscripted *could* imperil national security if such disaffection were felt in the ranks of the conscripts themselves. If young men conscripted in a male-only draft believed that they were drafted in an unfairly discriminatory manner, that belief could undermine the morale and performance of the Armed Forces just as discrimination led to the poor morale and performance of "Jim Crow" units in World War II. This Court noted the deleterious effect upon troop morale of exemptions perceived to be unfair in *Gillette v. United States,* 401 U. S. 437, 459-60 (1971). Potential draftees, young men now ages 18 through 24, *oppose the exclusion of women* from the draft by 61% to 35%, according to the February 18, 1980 Newsweek poll of young adults.

CONCLUSION

The proposed intervention would broaden and obfuscate the narrow issue presented by this case: whether the complete exclusion of women from the pool of registrants serves important governmental objectives and is substantially related to any important and legitimate governmental interest. This case never has been about *drafting* equal numbers of men and women, or about judicially narrowing the exclusion of women from combat. (Jurisdictional Statement, 21a-22a, 31a-34a). Neither the interests nor arguments of Proposed Intervenors are properly before this Court.

Intervention should be denied.

Respectfully submitted,

Dated: Sept. 29, 1980

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APPENDIX A

A PHILADELPHIA SUIT became involved when defendants asked that a copy of the Pentagon study be made part of it. Page [illegible]

THE PHILADELPHIA INQUIRER, THURSDAY MORNING, JUNE [illegible]

Suit Is Filed Here to Void Draft Act, Cites Report on War Involvement

By FRANK McDEVITT
and GERALD McKELVEY
Of The Inquirer Staff

The Pentagon study on the early conduct of the Vietnam War will be requested as part of [illegible] filed yesterday in the Federal District Court here [illegible] because it forces [illegible] to participate "in an illegal and unconstitutional war."

asking that the draft be declared unconstitutional.

The suit, filed in behalf of one youth registered with the draft and three who face registration, asks that the Selec-

CLASS ACTION

The suit was brought as a class action in behalf of all youths who face the draft. [illegible]

is already registered, and his brother, Steven, 16, of 5125 Woodbine ave; David Freudberg, 16, of 345 Sinkler rd., Wyncote; and David B. Sitman, 17, of 220 Clearview [illegible] Huntingdon Valley.

Defendants are Curtis W. Tarr, national Selective Service director; all state draft directors and the more than 4000 local draft boards in the U.S.

The suit charges that the Selective Service Act coerces military service "in conflict to their moral, ethical and political beliefs" on eligible youths, because of the "threat of criminal sanction" for noncompliance.

WAR CALLED ILLEGAL

In addition, according to the brief filed by attorney Harold E. Kohn, inducted youths would "be accessories to, aid, abet or collaborate with the commission of war crimes and other acts, including . . . participation in an illegal and unconstitutional war, contrary to recognized principles of military, national and international law."

An associate defense counsel, who asked not to be identified, said, "We will ask the government to produce the Pentagon report on the war published in the New York Times beacuse it is relevant to our case."

... the checks should be deposited with-

9-year-old antidraft suit revived with plan to resume registration

By Tom Masland
Inquirer Staff Writer

Nine years ago, at the height of the Vietnam war, four young Philadelphia men sued the Selective Service System in an effort to have the draft declared unconstitutional.

The draft ended in 1973, although the law authorizing it was never repealed, and most of the plaintiffs forgot about the suit, disappointed that a federal appeals court had stripped it of all but a claim that the all-male draft discriminated against men.

But now, as Congress prepares to wrestle with President Carter's proposal that men and women be required to register for the draft, the suit — the nation's only active challenge to the draft — is finally moving toward resolution.

"We have tried to step it up," said Stuart H. Savett, a partner in the center city law firm that has represented the four men. "We maintain that without women the draft is unconstitutional ... my own personal belief is that it is discriminatory and that females should be included just as they are in Israel."

A three-judge panel in U. S. District Court here is preparing to rule on a government request that the suit be dismissed on grounds that the issue is moot and that the plaintiffs have no standing to sue because they were never drafted. If the judges order the case to proceed, it could provide an early test of the sex issues involved in the creation of any new conscription army

During the last year, a number of Carter administration officials have favored draft registration for both sexes, and last week Carter called for registration of women.

However, House Speaker Thomas O'Neill (D., Mass.) already has predicted that Congress will refuse to order women to register. Accordingly, the administration is preparing to introduce two bills, one calling for registration of men only, the other for registration of both sexes.

"The question has not been raised very much, because the sensitivity to sexual discrimination didn't begin until the mid-1970s, after the draft had already ceased to function," said William Z. Elliott, a Justice Department trial attorney who is representing the government in the Philadelphia suit.

"It is the only pending draft case we've got," he said. "It is a fascinating one, one that has lingered past its time."

Originally, the suit challenged the 1967 draft law on a number of constitutional grounds, alleging, among other things, that the draft was a form of slavery and that it could force men to participate in war crimes.

However, a federal appeals court stripped the suit of all but the charge that the male-only draft is "arbitrary, capricious and without rational and compelling justification in view of modern social and military organization or requirements. ..." The draft system, the suit says, violated the plaintiffs' Fifth Amendment rights of due process and equal protection under the law.

"Most of the (plaintiffs) dropped out, because they thought precisely the sort of thing that Carter is proposing would happen — instead of ending the draft system, women would get drafted too, and that would only widen the problem," said one plaintiff, David B. Sitman, 25, in a telephone interview Wednesday from Israel, where he now lives. "Moreover, the draft system was pretty much moribund and we didn't have much interest."

However, another of the plaintiffs, Robert L. Goldberg, 26, said in a deposition taken during the suit's pretrial phases that he hopes that the suit might still block conscription.

"I see the draftability of women as being a deterrent to drafting anybody at all," he said.

Attorney Donald L. Weinberg said during pretrial arguments last year that the 1967 draft law could easily be revived.

"What can be done by one man in an executive fiat, can be undone," he said.

Weinberg said that a requirement that men and women be drafted could act as a brake on militarism.—

"We're more likely to dig in our heels and object quickly if some of the caskets coming back may be females," he said.

The suit is being considered by District Court Chief Judge Joseph S. Lord 3d, District Judge Edward N. Cahn and Appeals Court Judge Max Rosenn.

SUN-TIMES
CHICAGO, ILL.
M-565,000 S-870,000

JUN-27-80

ACLU sex-bias suit filed to block draft

WASHINGTON (UPI)—The American Civil Liberties Union filed suit Thursday in an effort to strike down, on grounds of sex discrimination, the draft registration law Congress approved a day earlier.

The class-action suit, filed in U.S. District Court here in the name of 16 young men affected by the registration law, charges that by applying only to men, the new law is unconstitutional.

ACLU spokesmen admit the sex discrimination claim is a legal lever to eliminate the entire registration scheme.

Among the 16 named plaintiffs, the ACLU said, are two from the Chicago area: Kenneth Blum, a junior physics major at Oberlin College in Ohio, and Jay Goldring, an Evanston Township High School graduate, now a junior at Columbia University in New York City.

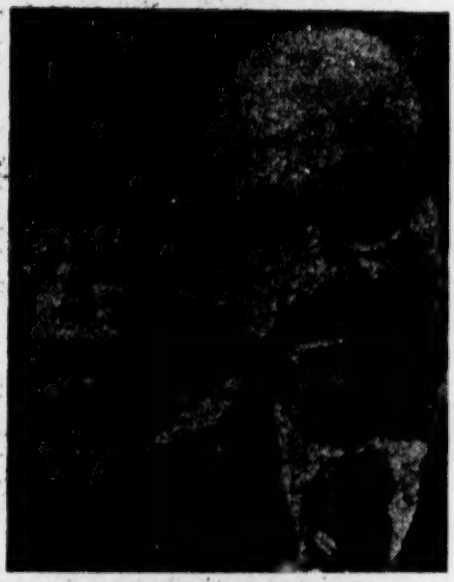
PRESIDENT CARTER is expected to sign the challenged bill shortly. Selective Service Director Bernard Rostker said Carter will issue a proclamation, possibly next Tuesday, reviving registration.

Registration of 19- and 20-year-olds at post offices probably will begin July 21. Failure to register is a felony carrying maximum penalties of a $10,000 fine or five years imprisonment or both.

"We have obviously not considered draft registration a benefit, and we have no desire to extend it to women," ACLU Executive Director Ira Glasser said. "But we believe that if this is successful, it will effectively kill the whole plan."

ISABELLE KATZ PINZLER, ACLU counsel in the suit and director of the ACLU's Women's Rights Project, said, "We believe that under current rulings on sex discrimination by the U.S. Supreme Court, draft registration for men only is unconstitutional.

"In order to exclude women, the government must show that their exclusion is closely and substantially related to an important government purpose. The government cannot make such a showing in this case."



ACLU executive director Ira Glasser announces in Washington he is filing suit to have draft registration declared unconstitutional because women are exempt. Behind him is Jay Goldring, of Evanston, a plaintiff in the suit. (AP)

Pinzler said women have performed capably in the all-volunteer armed forces and have graduated from the military academies. She also noted that Carter, Rostker and Defense Secretary Harold Brown all have called for inclusion of women in draft registration.

The issue could be resolved in another pending suit, a nine-year-old sex-discrimination challenge to the draft begun during the Vietnam War, scheduled to go to trial next Tuesday in Pennsylvania.

DAILY NEWS
NEW YORK, N. Y.
M-1,925,000
S-2,700,000

JUN-27-80

Draft signup to start July 21

(Continued from page 2)

are not infringed upon if she is not required to register for the draft.

The study noted the courts have repeatedly ruled in the past that nothing in the Constitution requires registering or drafting women. The Supreme Court, however, has never ruled on the issue.

A case in federal district court in Philadelphia, dating from the Vietnam war, may add the latest thinking of the courts. A man who was drafted is contending that he was discriminated against because the draft was limited to males.

The Carter administration has been divided on the constitutional question of drafting women. One Pentagon legal study says that "a statutory scheme which serves to reinforce sexual stereotypes or is based on archaic and overbroad generalizations will not be sustained by the Supreme Court under equal protections provisions (of the law)."

Selective Service Director Bernard Rostker has said that drafting women was not needed from a personnel standpoint—there are enough women volunteers to fill all possible female slots—but that registering women probably was the "safest thing" to do from a legal standpoint.

Draft plan will begin on July 21

By JOSEPH VOLZ

Washington (News Bureau)—President Carter will renew draft registration for 4 million young men on July 21, Selective Service officials said yesterday as the American Civil Liberties Union went to court to block the action—the first draft registration since 1975.

Under the plan, all 20-year-old males must register the week of July 21 at post offices across the country, with 19-year-old men registering the following week.

In a suit filed in federal district court here, the ACLU contended that registration of men only was unconstitutional. Although Carter originally included women in the plan to register all 19 and 20-year-olds, Congress limited the registration to males.

The ACLU's real goal

Isabelle Katz Pinzler, director of the ACLU's Women's Rights Project, who filed the suit, said: "In order to exclude women, the government must show that their exclusion is closely and substantially related to an important government purpose. The government cannot make such a showing in this case."

The suit said that women "have performed capably in the all-volunteer force and women are being graduated from the military academies." About 8% of the soldiers in the Army are women and, this spring, women were graduated and commissioned from the service academies for the first time.

ACLU officials said that their goal was not to expand draft registration to include women, despite their military capabilities, but to have the entire program tossed out so that no one—male or female—has to register for the draft.

A Justice Department study, which has not been made available to the public, says that a woman's constitutional rights

STAR
KANSAS CITY, MO.
E-315,000 S-410,000

JUN 27 1980

Draft sign-up set; court test planned

By the Associated Press

Washington—President Carter will instruct 4 million men aged 19 and 20 to line up at post offices for a two-week peacetime draft registration starting July 21, an official says.

Selective Service Director Bernard Rostker said Thursday that 20-year-old men will be required to register the week starting July 21 and 19-year-old men the week starting July 28.

The official proclamation bringing back draft registration will be issued by the president, possibly Tuesday, Rostker said. Registration was suspended in 1975.

Opponents filed suit Thursday, seeking to kill registration on grounds it amounts to unconstitutional sex discrimination against men since women are not required to register. But their attorneys acknowledged some doubt as to whether they can block the initial registrations July 21.

The suit was filed by the American Civil Liberties Union on behalf of all draft-aged American men as a class and on behalf of 18 of them as individuals.

ACLU Executive Director Ira Glasser said: "We think this lawsuit is now the best way to stop draft registration entirely. We believe that under the current rulings on sex discrimination by the U.S. Supreme Court, draft registration for men only is unconstitutional."

An ACLU attorney, Ms. Isabelle Katz Pinzler, said she believes the challenge against draft registration will be before the Supreme Court "before very long."

Ms. Pinzler said the challenge may get a court hearing as early as Tuesday if ACLU lawyers succeed in joining a 9-year-old suit being heard in Philadelphia that day.

That suit by Robert Goldberg, a former Philadelphia resident, seeks to have both the draft and draft registration declared unconstitutional because they don't affect women.

Under the plan outlined by Rostker, 20-year-old men born in January, February or March will be required to register at local post offices July 21. Those born in April, May and June will be required to register July 22; those born in July, August and September will have to register July 23, and those born in October, November and December will have to register July 24. July 25 will be a make-up day.

All 19-year-old men will be required to register the following week on the same schedule.

The draft itself is not being renewed. The purpose of registration is to supply names and addresses of eligible men who could be called for processing if Congress renews the draft in the future.

BULLETIN
PHILADELPHIA, PA.
E-615,000 S-990,000

JUN-27-80

V

ACLU files lawsuit against draft plan

Washington — (UPI) — Saying it is unconstitutional because it excludes women, the American Civil Liberties Union (ACLU) yesterday filed suit to strike down the draft registration law approved by Congress one day earlier.

The class-action suit, filed in U.S. District Court for the District of Columbia in the name of 16 young men affected by the registration law, charges that by applying only to men and excluding women, the new law is unconstitutional.

Final congressional approval was given the bill on Wednesday. It is expected to be signed into law by President Carter shortly.

The first registration of 19- and 20-year-old men probably will begin July 21 at U.S. post offices. Failure to register is a felony and carries maximum penalties of a $10,000 fine and five years in prison.

"This lawsuit arises out of our general opposition to draft registration," said ACLU director Ira Glasser. "We think that this lawsuit is now the best way to stop draft registration entirely."

Selective Service System Director Bernard Rostker and Postmaster General William Bolger are named as defendants.

"We believe that under current rulings on sex discrimination by the U.S. Supreme Court, draft registration for men only is unconstitutional," Isabelle Katz Pinzler, ACLU counsel in the suit and director of the ACLU's Women's Rights Project, told a news conference.

"In order to exclude women, the government must show that their exclusion is closely and substantially related to an important government purpose," she said. "The government cannot make such a showing in this case."

Another pending suit, a nine-year-old sex discrimination challenge to the draft which originated during the Vietnam War, is scheduled to go to trial next Tuesday in Philadelphia.

Both Glasser and Ms. Pinzler said the ACLU opposes peacetime registration and conscription of both men and women.

Ms. Pinzler said women have performed capably in the all-volunteer armed forces and are being graduated from the military academies.

CHRISTIAN SCIENCE
MONITOR
BOSTON, MASS.
M-200,000

JUN-27-80

Draft sign-up foes file suit

Washington

The American Civil Liberties Union filed suit Thursday seeking to strike down President Carter's draft registration plan on grounds it discriminates against women. The class-action suit was filed in US District Court for the District of Columbia in the name of 16 young men affected by the registration law.

Final congressional approval was given the bill on Wednesday and it is expected to be signed by President Carter shortly.

Registration for a possible future draft by about 4 million young men born in 1960 and 1961 is slated to begin at 34,000 US post offices next month. Failure to register is a felony and carries maximum penalties of a $10,000 fine and five-year imprisonment or both.

"This lawsuit arises out of our general opposition to draft registration," said ACLU director Ira Glasser. "We think that this lawsuit is now the best way to stop draft registration entirely."

Another pending suit, a nine-year-old sex discrimination challenge to the draft which originated during the Vietnam war, is scheduled to go to trial next Tuesday in Pennsylvania, and the matter could be resolved there.

CHRONICLE
SAN FRANCISCO, CAL.
M-475,000

JUN-27-80

Draft Callup Suit Charges Sex Bias

Washington

The American Civil Liberties Union yesterday filed suit seeking to strike down the draft registration law that Congress approved Wednesday, on the ground of sex discrimination.

The class action suit was filed in federal court in the District of Columbia in the name of 16 young men who are affected by the registration law. The suit charges that by applying only to men and excluding women the new law is unconstitutional.

Final congressional approval was given the legislation Wednesday, and the bill is expected to be signed soon by President Carter.

Registration of 19- and 20-year-olds probably will begin July 21 at U.S. post offices. Failure to register is a felony, and carries maximum penalties of a $10,000 fine and five-year imprisonment, or both.

"This lawsuit arises out of our general opposition to draft registration," said ACLU director Ira Glasser. "We think that this lawsuit is now the best way to stop draft registration entirely."

Selective Service System director Bernard Rostker and Postmaster General William Bolger are named as defendants.

"We believe that under current rulings on sex discrimination by the U.S. Supreme Court, draft registration for men only is unconstitutional," said Isabelle Katz Pinzler, ACLU counsel in the suit and director of the ACLU's Women's Rights Project.

"In order to exclude women, the government must show that their exclusion is closely and substantially related to an important government purpose," she said at a news conference. "The government cannot make such a showing in this case."

Another pending suit, a nine-year-old sex discrimination challenge to the draft that originated during the Vietnam War, is scheduled to go to trial Tuesday in Pennsylvania, and the matter could be resolved there.

Both Glasser and Pinzler said the ACLU opposes peacetime registration and conscription of both men and women.

United Press

CONSTITUTION
ATLANTA, GA.
M-215,000

JUN-27-80

ACLU Files Sex Bias Suit To Block Draft Sign-Up

WASHINGTON (UPI) — The American Civil Liberties Union Thursday filed suit seeking to strike down the draft registration law Congress approved one day earlier on grounds it discriminates against women.

The class action suit, filed in U.S. District Court for the District of Columbia in the name of 16 young men affected by the registration law, charges that by excluding women the new law is unconstitutional.

The bill got final congressional approval Wednesday and is expected to be signed by President Carter soon.

First registration of 19- and 20-year-olds probably will begin July 21 at U.S. post offices. Failure to register is a felony and carries maximum penalties of a $10,000 fine and five-year imprisonment or both.

"This lawsuit arises out of our general opposition to draft registration," said ACLU director Ira Glasser. "We think that this lawsuit is now the best way to stop draft registration entirely."

Selective Service System director Bernard Rostker and Post Master General William Bolger are named as defendants.

"We believe that under current rulings on sex discrimination by the U.S. Supreme Court, draft registration for men only is unconstitutional," Isabelle Katz Pinzler, ACLU counsel in the suit and director of the ACLU's Women's Rights Project told a news conference.

"In order to exclude women, the government must show that their exclusion is closely and substantially related to an important government purpose," she said. "The government cannot make such a showing in this case."

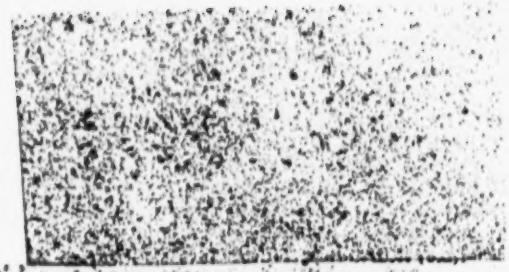
Another pending suit, a nine-year-old sex discrimination challenge to the draft which originated during the Vietnam war, is scheduled to go to trial next Tuesday in Pennsylvania, and the matter could be resolved there.

Both Glasser and Ms. Pinzler said the ACLU opposes peacetime registration and conscription of both men and women.

"We also believe that if Congress were faced with the choice between including women or abandoning draft registration, they would abandon draft registration," Glasser said.

Carter has said he opposes renewal of the draft at this time.

MORNING SUN
BALTIMORE, MD.
D-185,000 S-355.00



JUN-27-80

July 21 draft-signup start is set, but foes file suit

Washington (AP)—Peacetime draft registration for men was scheduled yesterday to begin July 21, but opponents filed suit to try to kill the registration program as unconstitutional sex discrimination.

Bernard Rostker, the director of Selective Service, said President Carter will issue a proclamation, possibly next Tuesday, instructing all 20-year-old men to register between July 21 and the end of that week and all 19-year-old males to begin registering July 28.

The American Civil Liberties Union filed suit in United States District Court seeking to outlaw the draft registration as unconstitutional because under the legislation no women are required to register.

"We think this lawsuit is now the best way to stop draft registration entirely," said Ira Glasser, the ACLU's executive director. "We believe that under current rulings on sex discrimination by the United States Supreme Court, draft registration for men only is unconstitutional."

Isabelle K. Pinzler, a lawyer in the case, said the ACLU will try to block registration from taking place next month, "but we are realistic enough to know we may not be able to do that."

However, she said, all registration forms filled out next month and all computer lists and other records would have to be destroyed if registration is later ruled unconstitutional.

President Carter had asked Congress for authority to register both men and women. The House and Senate both said no to the registration of women. Congress did approve, with a final House vote Wednesday, Mr. Carter's request for $13.3 million to renew registration for men only.

The draft itself remains dormant. Registration is designed to supply names and addresses of men eligible to be called for military service if Congress in the future renews the draft itself.

The American Civil Liberties Union filed its suit on behalf of all young American men as a class and 16 persons in particular. One of these, 17-year-old David Halperin, of Bethesda, Md., said:

"Of course, it is not a burden to go down to the post office and register. But it is a step toward war. It is being an instrument in a policy that could lead to war, and that is something I am not willing to do."

Miss Pinzler said she and other ACLU attorneys are trying to win a hearing as early as next Tuesday by joining in a nine-year-old suit scheduled to be heard that day in a Philadelphia courtroom.

In that suit Robert Goldberg, a former Philadelphia resident, is seeking to have both the draft and the registration of men declared unconstitutional sex discrimination.

If the ACLU is not able to join in the Philadelphia suit, Miss Pinzler said, the ACLU will try to obtain a hearing in the U.S. District Court in Washington before the July 21 beginning of registration.

Either way, she said, "I assume they [the issues] are going to be in the Supreme Court before very long."